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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/665,326

09/19/2000

Melvin Gable

08407/005002

5643

20985

7590

05/20/2004

FISH & RICHARDSON, PC  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130-2081

EXAMINER

CHEVALIER, ROBERT

ART UNIT

PAPER NUMBER

2615

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/665,326

Applicant(s)

GABLE ET AL.

Examiner

Bob Chevalier

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2-3, 6</u> . | 6) <input type="checkbox"/> Other: _____  |

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### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-13 of U.S. Patent No. 6,151,443. Although the conflicting claims are not identical and that the claimed language of the present Application is somewhat different from the language recited in the patented claims 6-13, however, they are not patentably distinct from each other because it is noted that it would have been obvious to one of ordinary skill in the art to recognize that the patented claims 1-13 would be able to perform the functions of the claimed limitations of the present Application since the limitations recited in the claimed invention of the present Application are also recited in the patented claims 6-13, including the feature of having recorded on a recording medium one or more sessions while permitting changes between different formatted streams (See the capability of having multiple recorded sessions of one or more encoded streams of audio/video data as recited in the Patent No. 6,151,443, column 10, lines 23-28, and further, see the

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Patent No. 6,151,443, column 12, lines 22-23), and recording on the medium one or more splice point indicators providing information sufficient to determine the end of each session (See the Patent No. 6,151,443, column 10, lines 26-27, and see the Patented claim 29, paragraph c), and the feature of determining the end session based on the information provided by the detected splice point indicators, and re-synchronizing the decoding device to a reference clock value corresponding to a next session in response to detection of each session end, as specified in claims 1, and 10, of this Application. (See the Patent No. 6,151,443, column 10, lines 34-39, and see the patented claim 29, paragraph h).

With regard to claims 2, and 11, the feature of the splice point indicator delineates the end of a session as specified thereof is present in the Patent No. 6,151,443, claim 7.

With regard to claims 3, and 12, the feature of the splice point indicators are continuity time-stamp fields periodically recorded on the recording medium as specified thereof is present in the Patent No. 6,151,443, claim 8.

With regard to claims 4, and 13, the feature of the reference clock value being derived from at least one continuity time-stamp field as specified thereof is present in the Patent No. 6,151,443, claim 9.

With regard to claims 5, and 14, the feature of the period of the continuity time stamp fields permits re-synchronization with essentially no perceptible interruption in decoding of the streams as specified thereof is present in the Patent No. 6,151,443, claim 12.

With regard to claims 6, and 15, the feature of the period of the continuity time stamp fields is at least equal to the track rate of a helical scan recording device as specified thereof is present in the Patent No. 6,151,443, claim 13.

With regard to claims 7, and 16, the feature of the reference clock value being embedded in such next session as specified thereof is present in the Patent No. 6,151,443, claim 10.

With regard to claims 8, and 17, the feature of the digitally encoded, interframe compressed streams of audio/video data being MPEG-encoded as specified thereof is present in the Patent No. 6,151,443, claim 11.

With regard to claim 9, the feature of issuing a check condition indicating detection of the end of a session; receiving a request sense command; and determining a reference clock value in response to receipt of the request sense command as specified thereof is present in the Patent No. 6,151,443, claim 38.

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Howe et al discloses a shift correcting code for channel encoded data.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bob Chevalier whose telephone number is 703-305-4780. The examiner can normally be reached on MM-F (9:00-6:30), second Monday off.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Christensen can be reached on 703-308-9644. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

B. Chevalier  
May 15, 2004.

  
ROBERT CHEVALIER  
PRIMARY EXAMINER